Examiner's rejections. The amendments to the claims do not add any new matter, but rather, merely place the claims in better condition for Appeal. Accordingly, Applicant respectfully requests the Examiner enter the amendment and withdraw the §112 rejection.

35 U.S.C. §102(e) Rejections

The Examiner has maintained the rejection to claims 32-38 under 35 U.S.C. §102(e) as being anticipated by Silver. However, Applicant strongly disagrees with the rejection.

Claim 32 explicitly requires "<u>prescribing</u> a medical supply by a medical care provider to a patient resulting from a <u>medical examination</u>...[and]... accounting for the transaction to the medical care provider such that <u>the medical care provider receives, directly or indirectly, compensation for the transaction</u>" (emphasis added). Silver, in sharp contrast, fails to teach either of these requirements.

Silver teaches a system that collects and stores various personal data about a user and the user's lifestyle, and uses that data to determine the user's physiological age and measure the user's wellness. The system may offer suggestions, based on a set of pre-determined rules, to assist the user in reaching a health-related goal and may include links to certain products, such as vitamins and smoking-cessation aids (none of which require a prescription or a medical examination). Thus, if the user wishes to stop smoking, the questionnaire may point the user to various vendors' products that may help the user reach that goal.

However, the system of Silver (i.e., a computer) is not a medical care provider, and therefore, cannot possibly render the requisite "medical examination" of claim 32. As such, it cannot "prescribe" a medical supply "resulting from [the] medical examination" as Applicant uses that term (see page 4 of the specification, lines 3-4). In

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sharp contrast, the system of Silver merely develops a "Wellness Option Plan" customized for the user and based on the information *input by the user*. A medical Examination is neither needed, nor required.
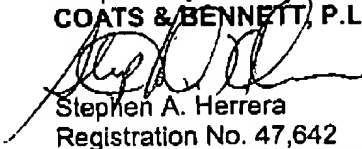
The Examiner equates the subscription fees to compensation received by the medical care provider for the transaction. However, with all due respect, the Examiner's assertion is inaccurate and unsupported by the Silver patent. The "accounting" limitation of claim 32 requires that the medical care provider "receives, directly or indirectly, compensation for the transaction." In other words, once the medical care provider has examined a patient and prescribed a medical product, the medical care provider receives compensation (e.g., money) resulting from the purchase of the prescribed product from the medical supply vendor. That is how the "accounting" limitation, the last paragraph of claim 32, must be construed. Any other interpretation of that claim element is improper.

The subscription fee of Silver, in contrast, is nothing more than a fee paid to the system owner for the privilege of *using* the system for a limited time (i.e. membership dues). Indeed, Silver explicitly teaches that the user cannot begin to use the system if he/she is not a paid subscriber (see Figure 1; column 8 of Silver, lines 41-51). Nothing in Silver teaches that the subscription fees result from the order (and subsequent purchase) of a *prescribed* medical supply from a medical supply vendor - it simply allows the user to access the system. Under no circumstances can the "accounting" limitation of claim 32 be construed so broadly as to cover the subscription fee of Silver.

Finally, Silver never equates the disclosed subscription fees to compensation received by the medical care provider as the Examiner asserts, and the Office Action is conspicuously devoid of any citation from the Silver patent that supports such an assertion. The Examiner merely makes a statement (see page 3 of the Office Action).

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However, the Patent Office is not entitled to reject claims based on unsupported facts and speculation. Therefore, Silver fails to anticipate claim 32 under §102(e), because Silver fails to teach at least the above-cited limitations required by claim 32. Accordingly, Applicant requests the allowance of claims 32-38.

Attached hereto is a marked-up version of the current amendments made to the claims. The attached page is entitled "**Version with markings to show changes made.**"

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Respectfully submitted,
COATS & BENNETT, P.L.L.C.

By:

Stephen A. Herrera
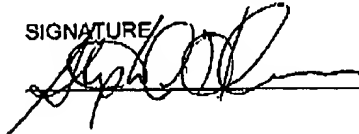Registration No. 47,642
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Version with markings to show changes made

Claims 32 and 34-36 have been amended as follows:

32.   A method of selling a prescribed medical supply via the World Wide Web

comprising:

prescribing a medical supply by a medical care provider to a patient resulting

from a medical examination;

ordering the prescribed medical supply in a transaction from a medical supply

vendor by communicating the order through a website associated with the

medical care provider;

consummating the transaction by arranging payment through an e-commerce

provider communicatively linked to the website associated with the medical

care provider;

delivering the prescribed medical supply to the patient; and

accounting for the transaction to the medical care provider such that the medical

care provider receives, directly or indirectly, compensation for the

transaction.

34.   The method of claim 32 wherein the e-commerce provider accounts to the

medical [supply] care provider.

35.   The method of claim 32 wherein the e-commerce provider submits payment to

the medical [service] supply vendor and accounts to the medical care provider.

36.   The method of claim 32 wherein the e-commerce provider updates [the] an

account [of] associated with the medical care provider and [the] an account [of]

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associated with the medical [service] supply vendor supplying the prescribed medical supply in response to each transaction.

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